

APPEAL NO. 020923
FILED JUNE 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 26, 2002. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she had disability beginning _____, continuing through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer erred in admitting Hearing Officer's Exhibit No. 3 after the record closed following the hearing, which includes an affidavit from the claimant's husband, alleging that two of the witnesses for the carrier were sharing information in the waiting room prior to testifying. Alternatively, the carrier asserts that the hearing officer's injury and disability determinations are against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and remanded.

As is noted above, after the record had closed, the hearing officer reopened the record to admit Hearing Officer's Exhibit No. 3, which included an affidavit from the claimant's husband contending that two witnesses for the carrier shared information about the case and their testimony in the waiting room in violation of the rule of sequestration. The hearing officer forwarded a copy of the affidavit to each of the parties on March 29, 2002, with a letter stating, in relevant part, that the "matter raised will be considered for [sic] solely on the issue of the credibility of the challenged evidence." The hearing officer did not afford the carrier an opportunity to respond to the allegations. Rather, he closed the record and issued his decision on March 29, 2002. The decision and order was distributed to the parties on April 1, 2002, the date that the letter from the hearing officer forwarding Hearing Officer's Exhibit No. 3 to the parties was date-stamped as having been received by the attorney for the carrier. We believe that the hearing officer erred in admitting Hearing Officer's Exhibit No. 3, without permitting the carrier to respond to the allegations made therein. Accordingly, and in the interest of fundamental fairness, we reverse the hearing officer's decision and order and remand for the hearing officer to hold a hearing to provide the carrier with an opportunity to respond to the accusations made in the affidavit of the claimant's husband. That opportunity would seem to require that the carrier be afforded the opportunity to cross-examine the claimant's husband and to develop evidence from its witnesses relative to the allegations leveled against them.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays,

Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge